



Billing Code: 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5997-N-17]

30-Day Notice of Proposed Information Collection:

Implementation of the Housing for Older Persons Act of 1995 (HOPA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: Comments Due Date: **[Insert date that is 30 days after the date of publication in the Federal Register.]**

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: OIRA_Submission@omb.eop.gov

FOR FURTHER INFORMATION, CONTACT: Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; e-mail Inez C. Downs at Inez.C.Downs@hud.gov or telephone 202-402-8046. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at

(800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Downs.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 13, 2016 at 81 FR 89964.

A. Overview of Information Collection

Title of Information Collection: Implementation of the Housing for Older Persons Act of 1995 (HOPA).

OMB Approval Number: 2529-0046.

Type of Request: Extension without change of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The Fair Housing Act [42 U.S.C.3601 et seq.], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on familial status (individuals living in households with one or more children under 18 years of age). However, under §3607(b)(2) of the Act, Congress exempted three (3) categories of “housing for older persons” from liability for familial status discrimination: (1) housing provided under any State or Federal program which the Secretary of HUD determines is “specifically designed and operated to assist elderly persons (as defined in the State or Federal program)”; (2) housing “intended for, and solely occupied by persons 62 years of age or older”; and (3) housing “intended and operated for occupancy by at least one person 55 years of age or older per unit [‘55 or older’ housing].” In December 1995, Congress passed the Housing for Older Persons Act of 1995

(HOPA) [Public Law 104-76, 109 STAT. 787] as an amendment to the Fair Housing Act.

The HOPA modified the “55 or older” housing exemption provided under §3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer “*significant facilities and services specifically designed to meet the physical or social needs of older persons.*” In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *at least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age or older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with “rules issued by the Secretary for verification of occupancy, which shall..... provide for [age] verification by reliable surveys and affidavits.”

The HOPA did not significantly increase the record-keeping burden for the “55 or older” housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, in the course of a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the “55 or older” housing exemption as of the date of the alleged Fair Housing Act violation.

The HOPA information collection requirements are necessary to demonstrate a housing provider’s eligibility to claim the “55 or older” housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental, or occupancy of dwelling units situated in qualified senior housing facilities or communities. The HOPA’s requirement that a housing provider must demonstrate the intent

to operate a “55 or older” housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a “55 or older” housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA’s “*80 percent occupancy*” requirement, and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions, and should require minimal preparation time. Further, a senior housing provider’s operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information would be protected from disclosure unless the housing provider claims the “55 or older” housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD’s Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status

discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the “55 or older” housing exemption as an affirmative defense to the complaint.

Members of affected public: The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: The HOPA information collection requirements are the responsibility of the individual housing facility or community that claims eligibility for the HOPA’s “55 or older” housing exemption. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD estimated the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10)

transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event, and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Please see table below

Type of Collection Activity	Number of Respondents	Frequency of Response	Total Annual Responses Hours	Burden Hour Per Response	Total Annual Burden Hours	Hourly Cost Per Response	Annual Cost
<u>One:</u> Publication of and adherence to policies and procedures that demonstrate the intent to operate as 55-or-older housing	1,000	1	1,000	2	2,000	\$21.30	\$42,600.00
<u>Two:</u> Collect age verification data for at least one occupant per unit to meet the HOPA's minimum "80" requirement	1,000	1	1,000	1	1,000	\$21.30	\$21,300.00
<u>Three:</u> Periodic updates of occupancy records	1,000	1	1,000	2.50	2,500	\$21.30	\$53,250.00
Total Burden Hours and Costs			3,000		5,500		\$117,150.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including using appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 3, 2017.

Inez C. Downs
Department Reports Management Officer
Office of the Chief Information Officer

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